

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-350

June 11, 2002

BANGOR HYDRO-ELECTRIC COMPANY  
Request for Approval of Employee Lease  
Termination Agreement

ORDER APPROVING  
TERMINATION AGREEMENT  
AND REMOVING CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

Through this Order, we approve the termination of an employee lease arrangement between Bangor Hydro-Electric Company (BHE) and Emera Energy Services, Inc. (EES). We also remove several conditions imposed in conjunction with the employee lease arrangement. The Commission approved the lease and imposed the conditions by order issued March 21, 2002. *Request for Approval of Reorganization and of Affiliated Interest Transactions with Emera Energy Services*, Docket No. 2001-841 (Mar. 21, 2002) (Reorganization Order).

**II. BACKGROUND**

On December 5, 2001, BHE filed for approval of a Lease of Management Employee Agreement (Lease Agreement) pursuant to 35-A M.R.S.A. § 707. The filing was in conjunction with BHE's request for approval, pursuant to 35-A M.R.S.A. § 708, of the creation of a marketing affiliate (EES). Under the Lease Agreement, Calvin Bell would work under the direction and supervision of EES for a six-month period; EES would compensate BHE for Mr. Bell's services, and Mr. Bell would continue to be paid by BHE. On March 21, 2002, the Commission issued an Order that approved the Lease Agreement subject to several specified conditions. Reorganization Order at 12-23. This Order is currently on appeal to the Law Court.

On April 30, 2002, BHE filed for a supplemental order approving a Termination of Lease of Management Employees Agreement (Termination Agreement) and removing several of the conditions the Commission imposed when it approved the Lease Agreement. The Termination Agreement is between BHE and EES and thus requires affiliate transaction approval pursuant to 35-A M.R.S.A. § 707. BHE captioned its filing a Motion for Reconsideration and Supplement Order and filed it in the Lease Agreement approval proceeding (Docket No. 2001-841).

In its April 30 filing, BHE indicates that, upon Commission approval, the Lease Agreement will terminate and Mr. Bell will become a full-time employee of EES. EES requests that the Commission find that the termination is not adverse to the public

interest and approve it pursuant to section 707. BHE also asks that the Commission remove the following conditions associated with the lease:<sup>1</sup>

- Mr. Bell will not participate in EES's marketing to any present or former BHE customer for which Mr. Bell obtained confidential information while he was performing work for BHE.
- If Mr. Bell returns to BHE after the end of the lease, he will not return to EES for at least one year after his return to BHE.
- Mr. Bell will not reveal to EES any nonpublic information acquired from BHE. If Mr. Bell provides to EES, without a request, any information related to BHE's status as a utility that is publicly available but not easily accessible, he must provide such information to other competitive providers or make such information easily accessible to competitive providers even if the providers do not specifically request the information.
- BHE must obtain Commission approval for any extension of the lease or the addition of any employee to be covered under the lease.

On May 3, 2002, the Public Advocate filed a letter stating that the Commission lacks the jurisdiction to entertain the BHE filing. Maine's Rules of Appellate Procedure generally prohibit the trial court (the Commission in this case) from taking action in a case that is on appeal. MRAP 3(b). There is an exception for timely motions brought before the Commission. *Id.* MRAP 2(b)(3). The Public Advocate argues that, because the BHE filing was not made within the Commission's time requirements for motions for reconsideration the Commission is prohibited from acting on the request to approve the Termination Agreement. On May 8, 2002, Competitive Energy Services (CES) filed a letter agreeing with the Public Advocate's position that the Commission may not act on BHE's April 30 filing. CES states that such restrictions are necessary to prevent changes of positions or rationales that create a moving target for those seeking to exercise their appeal rights.

On May 15, 2002, BHE filed a response to the jurisdictional objection. BHE argues that procedural rules of the Law Court may not operate to prevent the Commission from carrying out its statutory responsibilities. Additionally, BHE states that the Commission clearly has the jurisdiction to review, in a new proceeding, a petition by BHE seeking approval of the Termination Agreement. Accordingly, BHE consents to the Commission's acceptance of BHE's April 30 filing as a petition and to the assignment of a new docket number.

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<sup>1</sup> BHE did not ask for the removal of the condition prohibiting EES from marketing to customers in BHE's service territory.

### III. DECISION

We will treat the April 30 filing as a new petition and approve the Termination Agreement.<sup>2</sup> We will also remove the associated conditions as requested by BHE.

The treatment of the request to approve the Termination Agreement as a new petition is appropriate and consistent with Commission practice. The Termination Agreement is a new agreement. It was not in existence during the Docket No. 2001-841 proceeding and thus its consideration was never at issue. Accordingly, a motion for reconsideration of the Reorganization Order would not be a proper vehicle to seek approval of the Termination Agreement. A new petition is a proper means to seek such an approval.

The Lease Agreement was among the most contentious issues in the Docket No. 2001-841 proceeding. Concerns were raised that the Agreement could lead to market abuses or unfair competitive advantages. The termination of the Lease Agreement at this time will remove a source of controversy and concern. We see no reason to delay the lease termination. We thus conclude that the Termination Agreement is not adverse to the public interest and we approve it.<sup>3</sup> We also agree with BHE that the conditions imposed as a result of the Lease Agreement (other than the prohibition on marketing in BHE's territory) should be removed as not necessary when the lease terminates and Mr. Bell becomes an employee of EES for all purposes. We thus rescind the conditions as requested in BHE's April 30 filing.<sup>4</sup>

Accordingly, we

### O R D E R

1. That the Termination Agreement filed on April 30, 2002, is hereby approved; and

2. That the conditions on Emera Energy Service listed in the body of the Order are, hereby, rescinded.

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<sup>2</sup>Because we treat BHE's request as a new filing, we do not consider arguments regarding whether the Court's procedural rules must yield to an agency's statutory duties.

<sup>3</sup> By taking this action, the Commission does not imply any position on whether the lease termination should affect the pending appeal of the Reorganization Order.

<sup>4</sup> Our action is premised on the understanding the Lease Agreement as it applies to any BHE employee, not just Mr. Bell, will be terminated. Thus, any future employee lease arrangement will require Commission approval.

Dated at Augusta, Maine, this 11th day of June 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.